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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,011	09/30/2003	Lynn Dickey	040989/267934	5538
826 7590 11/05/2009 ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			EXAMINER ZHENG, LI	
			ART UNIT 1638	PAPER NUMBER
			MAIL DATE 11/05/2009	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/675,011	Applicant(s) DICKEY ET AL.
Examiner LI ZHENG	Art Unit 1638

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 October 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 82-84 and 87-94.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☒ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s): 10/08/2009
13. ☐ Other: _____.

/Anne Marie Grunberg/
Supervisory Patent Examiner, Art Unit 1638

Continuation of 11, does NOT place the application in condition for allowance because: Claims 82-84 and 87-92 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Stomp et al. (1999, WO 99/07210) further in view of Wong et al. (1992, Plant Molecular Biology 20:81-93), Buzby et al. (1990, The Plant Cell 2:805-814) and Stiekema et al. (1983, Nucleic Acid Research 11:8051-8061), for the reasons of record stated in the Office action mailed August 19, 2009. Applicants traverse in the paper filed October 19, 2009. Applicants' arguments have been fully considered but were not found persuasive.

Applicants argue that the claim is amended to clarify that the 5' leader sequence consists of SEQ ID NO: 16 whereas Buzby et al. only teach a 5' leader sequence comprising SEQ ID NO: 16 (response, page 5, paragraphs 2-3). The Office contends that Buzby et al. only teach a 5' leader sequence consisting of SEQ ID NO: 16 rather than comprising. As shown in Figure 1 of Buzby et al., the 5' leader sequence from transcription start site to translation starting site of Buzby et al. consists of SEQ ID NO: 16.

Claims 82-84 and 87-94 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Stomp et al. (1999, WO 99/07210) further in view of Wong et al. (1992, Plant Molecular Biology 20:81-93), Buzby et al. (1990, The Plant Cell 2:805-814), Yu et al. (1995, U.S. Patent No. 5460952), Park et al. (1997, The Journal of Biological Chemistry 272:6876-6881) and Stiekema et al. (1983, Nucleic Acid Research 11:8051-8061), for the reasons of record stated in the Office action mailed August 19, 2009. Applicants traverse in the paper filed October 19, 2009. Applicants' arguments have been fully considered but were not found persuasive.

Applicants presented similar argument as those under U.S.C 103 (a) rejection above, therefore for the similar reason, the rejection is maintained.

Claims 82-84 and 87 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 16-17 of U.S. Patent No. 6,815,184 in view of Wong et al. (1992, Plant Molecular Biology 20:81-93), and Buzby et al. (1990, The Plant Cell 2:805-814), for the reasons of record stated in the Office action mailed August 19, 2009. Applicants traverse in the paper filed October 19, 2009. Applicants' arguments have been fully considered but were not found persuasive.

Applicants presented similar argument as those under U.S.C 103 (a) rejection, therefore for the similar reason, the rejection is maintained.

Claims 82-84 and 87-94 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3, 8-10, 23, 26-29 of copending Application No. 10/794,615, now notice of allowance being issued, for the reasons of record stated in the Office action mailed August 19, 2009. Applicants traverse in the paper filed October 19, 2009. Applicants' arguments have been fully considered but were not found persuasive.

Applicant's intention to file a terminal disclaimer when allowable subject matter is agreed on is acknowledged.

Claims 82-84 and 87 remain rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-25 of copending Application No. 11/778,480, which is a continuation application of the abandoned application of '846, in view of Wong et al. (1992, Plant Molecular Biology 20:81-93), and Buzby et al. (1990, The Plant Cell 2:805-814), for the reasons of record stated in the Office action mailed August 19, 2009. Applicants traverse in the paper filed October 19, 2009. Applicants' arguments have been fully considered but were not found persuasive.

Applicant's intention to file a terminal disclaimer when allowable subject matter is agreed on is acknowledged.